

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

MALIBU MEDIA, LLC,

Plaintiff,

v.

LANANH NGUYEN

Defendant.

Civil Action Case No.4:18-cv-00215

**PLAINTIFF’S RESPONSE IN LIMITED OPPOSITION TO DEFENDANT’S MOTION
TO SET ASIDE CLERK’S DEFAULT [CM/ECF 53] AND MOTION FOR LEAVE TO
FILE ORIGINAL ANSWER [CM/ECF 54]**

I. INTRODUCTION

Plaintiff, Malibu Media, files this response in limited opposition to Defendant, Lananh Nguyen’s motions To Set Aside Clerk’s Default [CM/ECF 53], and For Leave to File Original Answer [CM/ECF 54] (hereinafter collectively “Defendant’s Instant Motions”), as follows:

Plaintiff objects to the relief requested in Defendant’s Instant Motions only to the extent that both motions are premised on the argument that Plaintiff’s Request for Default [CM/ECF 46], and pending Motion for Final Default Judgment [CM/ECF 50], were improperly filed because Pro De Defendant previously filed an unsuccessful Motion to Dismiss [See Order Denying Motion to Dismiss at CM/ECF 44].

Once Defendant’s Motion to Dismiss was denied on January 30, 2019, Defendant’s obligation to answer the Amended Complaint within fourteen (14) days, pursuant to Fed. R. Civ. P. 12(a)(4)(A), was triggered. Defendant’s Answer should have been filed by February 13, 2019. Having failed to timely plead or defend by that deadline, Defendant was certainly in default pursuant to Fed. R. Civ. P. 55, and Plaintiff’s pursuit of a Clerk’s Default on February 20,

2019, was entirely proper and the grounds for the request for default were set out with specificity in that Request for Default [CM/ECF 46].

However, if Defendant now has retained defense counsel and wishes to actively participate in this litigation Plaintiff does not object to this Honorable Court: (1) granting Defendant's Motion to Set Aside Clerk's Default [CM/ECF 53]; (2) denying Plaintiff's Motion for Final Default Judgment, CM/ECF 50, as moot based on vacating the Clerk's Default; and, (3) granting Defendant's Motion for Leave to File Original Answer [CM/ECF 54] giving Defendant fourteen (14) days to file an answer to the Amended Complaint.

Dated: March 18, 2019

Respectfully submitted,

By: /s/ Paul S. Beik
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CERTIFICATE OF SERVICE

I hereby certify that, on March 18, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Paul S. Beik
PAUL S. BEIK